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May 23, 2003  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: December 3, 2002

Case Number: TSO-0012

This Opinion concerns the eligibility of XXXX XXXX(hereinafter referred to as "the Individual") to maintain a level "Q" access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The local Department of Energy Office (the DOE Office) suspended the Individual's access authorization under the provisions of Part 710. This Opinion considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, the Individual's access authorization should not be restored at the present time.

**I. BACKGROUND**

On February 2, 2001, the Individual was arrested for Aggravated Driving Under the Influence of Intoxicating Liquor. It was the Individual's third arrest in which alcohol was involved. The Individual's three arrests raised a significant security concern. A Personnel Security Interview (PSI) of the Individual was conducted on October 25, 2001. This PSI failed to resolve the security concerns raised by the Individual's three alcohol related arrests. Accordingly, the DOE Office referred the Individual to a board-certified psychiatrist (the DOE Psychiatrist) for further evaluation. After reviewing the information provided to him by the DOE Office and conducting a forensic psychiatric evaluation of the Individual, the DOE Psychiatrist diagnosed the Individual with "alcohol abuse." The DOE Psychiatrist further opined that the Individual was neither reformed nor rehabilitated.

Because the Individual was unable to resolve the security concerns resulting from his alcohol related arrests, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The DOE Office then issued a letter notifying the Individual that it possessed information which raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter).

The Notification Letter specifies one area of derogatory information described in 10 C.F.R. § 710.8. Specifically, the Notification Letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10

C.F.R. § 710.8(j). The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented three witnesses: the DOE Psychiatrist, the Individual and a representative of the Individual's employer. The Individual presented one witness: his supervisor, who sometimes socializes with the Individual. The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0012 (hereinafter cited as "Tr.").

## II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

## III. FINDINGS OF LAW AND FACT

The Individual has a history of at least three alcohol related arrests. His first formal attempt to address his alcohol problem occurred when he entered a court-ordered outpatient treatment program after a drunk driving conviction in 1998. On February 2, 2001, the Individual was, for the third time, arrested for drunk driving. The Individual was subsequently evaluated by the DOE Psychiatrist who concluded that the Individual's consumption of alcohol constitutes "Alcohol Abuse" as defined in the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition (DSM-IV). The Individual now agrees with the DOE Psychiatrist's diagnosis of alcohol abuse. Tr. at 8, 12, 26. <sup>1/</sup> Accordingly, the DOE Office has appropriately invoked Criterion J. The only question before me therefore is whether the Individual has mitigated the security concerns raised by his alcohol abuse.

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<sup>1/</sup> The Individual repeatedly indicated that he thought the DOE Psychiatrist's opinion was "outdated." Tr. at 8, 26. I understood this to mean that the Individual accepts the diagnosis but believes that he is now reformed or rehabilitated since he has not used alcohol for the past 11 months.

The Individual testified that he last consumed alcohol in May of 2002. Tr. at 10. Accordingly, the Individual has, by his own account, abstained from alcohol for approximately 11 months. The Individual has begun attending Alcoholics Anonymous (AA) meetings and has obtained an AA sponsor. Tr. at 11. Moreover, the Individual has received counseling services from his employer's employee assistance program (EAP). Tr. at 11, 16. 2/ Each of these actions are constructive and important steps towards rehabilitation and reformation. However, the Individual has still not resolved the security concerns raised by his abuse of alcohol.

As an initial matter, I note that the DOE Psychiatrist opined that the Individual, in order to rehabilitate or reform himself, needed to receive outpatient treatment of moderate intensity and abstain from alcohol use for a period of at least one year. DOE Psychiatrist's Report at 9. At the time of the hearing, the Individual had abstained from using alcohol for a period of 11 months. Tr. at 4. In addition, the Individual has been attending AA meetings and receiving counseling for his alcohol abuse. Accordingly, the Individual has nominally met the treatment recommendations set forth by the DOE Psychiatrist in his report.

In considering whether the Individual is rehabilitated or reformed I have taken several factors into account. Specifically, I have noted that (1) the Individual has apparently limited his involvement in his counseling and treatment programs, (2) the EAP Counselor does not wholeheartedly endorse the Individual's contention that he is rehabilitated or reformed, (3) the DOE Psychiatrist is not convinced that the Individual is rehabilitated or reformed, and (4) the Individual indicated that he would submit additional liver function tests, but failed to do so.

I am concerned about the Individual's apparently half-hearted AA participation. While the Individual apparently attends some AA meetings and has obtained a sponsor, his attendance of meetings is sporadic. Moreover, he has not yet begun working the 12 steps. Tr. at 14-15. I am even more concerned about the Individual's apparently half-hearted approach to his Employee Assistance Counseling. The Individual has submitted a letter, dated March 26, 2003, written by his Employer Assistance Counselor (the Counselor). In this letter, the Counselor states in pertinent part,

[The Individual] started well but then backed off. Since 7/2/02 we have had 9 sessions. He has attended some AA meetings but it has been sporadic. I do believe that he has been successful in abstaining from alcohol since I informed him he could not drink, even have a sip of alcohol if he wanted security clearance eligibility.

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His long range goal is to remain alcohol free. He is acutely aware of the danger it has created for his family and for himself. He has been able to articulate the quality of life improvements not drinking has made and continues to remain confident in his ability to remain sober.

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2/ The testimony of the Individual's employer representative and the Individual's supervisor indicated that the Individual is an excellent employee, an honest person and a good father.

March 26, 2003 Letter from Counselor to Whom It May Concern. This letter is, at best, a lukewarm endorsement of the Individual's progress towards rehabilitation and reformation.

At the Hearing, the DOE Psychiatrist heard the testimony of the Individual. After hearing the Individual's examination, the DOE Psychiatrist testified that he was still not convinced that the Individual was sufficiently reformed and rehabilitated. Tr. at 44. The DOE Psychiatrist noted that the Individual had "backed-off" in his intensity of treatment after just two months. Tr. at 36. The DOE Psychiatrist further noted that the Individual's current level of intensity of treatment is inadequate. *Id.* The DOE Psychiatrist was also concerned that the Individual was less than fully engaged in his AA program. *Id.* The DOE Psychiatrist testified that the Individual does not fully understand the danger posed to him by alcohol. To this end, the DOE Psychiatrist testified

The feel I have for it, though, is it kind of to me implies a failure to appreciate the danger alcohol poses to him, that his ability to control the drinking may be less than he thinks. His confidence that he'll be able to not drink excessively is a little too much, I think given the reality of the danger . . . he may not have enough respect for the danger that alcohol could be for him in his life, given the disasters that have hit him in the past from alcohol.

Tr. at 38. The DOE Psychiatrist further testified that the Individual has failed to convince him that he has a personal conviction that he must stop consuming alcohol. Tr. at 43. Moreover, the DOE Psychiatrist opined that the Individual only had a 50 percent chance of abstaining from alcohol use for the next year. The DOE Psychiatrist was also concerned that the Individual is not fully committed to sobriety. Tr. at 55. Specifically, the DOE Psychiatrist expressed concern that the Individual's motivation to abstain from alcohol was external, rather than internal. *Id.* Taking these factors into account, the DOE Psychiatrist testified that the Individual had not yet convinced him that there is adequate evidence of rehabilitation or reformation. Tr. at 44. I find the DOE Psychiatrist's testimony to be well reasoned and highly persuasive.

In his report, the DOE Psychiatrist also expressed concerns about the results of a liver enzyme test he had ordered for the Individual in late May 2002. This enzyme test had shown that the Individual had a mildly elevated ALT level. The DOE Psychiatrist believed the Individual's ALT level could have been elevated by alcohol consumption. <sup>3/</sup> At the Hearing and in his report, the DOE Psychiatrist testified that heavy alcohol consumption was the most likely cause of this elevated ALT level, but noted that a number of other factors could have elevated the ALT level. Tr. at 47-48. The Individual indicated that he had recently undergone a liver enzyme test and planned to submit the results to me when they became available to him. Tr. at 24-25, 39-40, 83-84. The Individual agreed to submit those results to me within three weeks. I never received the results of the Individual's most recent liver enzyme tests or an explanation of why the Individual did not submit the results to me. This failure to provide me with the latest liver enzyme test results does not reflect favorably upon the Individual.

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<sup>3/</sup> The DOE Psychiatrist testified that an individual would have to drink more than 20 drinks a week to elevate his liver enzymes. Tr. at 42.

After considering these factors, I am not convinced that the Individual has demonstrated that he truly understands the dangers posed to him by alcohol. Nor has the Individual demonstrated the commitment to his sobriety necessary for him to convince me that he is reformed and rehabilitated. Therefore, the Individual has not mitigated the security concerns raised by his alcohol abuse.

#### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has not shown that his access authorization should be restored at this time, since the Individual has not resolved the security concerns raised under Criterion J. The Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, it is my opinion that the Individual's access authorization should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: May 23, 2003